

AMENDED IN ASSEMBLY FEBRUARY 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 18

**Introduced by Assembly Member Leno
(Coauthors: Assembly Members Goldberg, Hancock, Kehoe,
Koretz, Laird, and Steinberg)**

December 2, 2002

An act to amend ~~Section 12993~~ *Sections 19572 and 19702* of the Government Code, relating to ~~civil rights~~ *public employment discrimination*.

LEGISLATIVE COUNSEL'S DIGEST

AB 18, as amended, Leno. ~~Civil rights:—~~*Public employment discrimination.*

(1) The State Civil Service Act provides that unlawful discrimination, as defined, including harassment, on various grounds, including disability, by a state employee or a person whose name appears on any employment list, against the public or other employees, while acting in the capacity of a state employee, is a cause for discipline.

This bill would remove disability from the bases of discrimination to which this provision applies, but would, instead, include gender, sexual orientation, physical disability, medical condition, and mental disability.

(2) The act also prohibits any person from being discriminated against, as defined, on various grounds.

This bill would also include gender, sexual orientation, age, and medical condition within the grounds of discriminatory conduct to which this provision applies.

~~The Fair Employment and Housing Act states the intent of the Legislature to occupy the field of regulation of discrimination in employment and housing encompassed by its provisions, exclusive of all other laws banning discrimination in employment and housing by any city, city and county, county, or other political subdivision of the state, except as specified.~~

~~This bill would instead provide that nothing in the act shall be construed to prohibit a city, city and county, county, or other political subdivision of the state from providing or maintaining greater protections against discrimination than those provided by the act.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 12993 of the Government Code is~~
- 2 *SECTION 1. Section 19572 of the Government Code is*
- 3 *amended to read:*
- 4 19572. Each of the following constitutes cause for discipline
- 5 of an employee, or person whose name appears on any
- 6 employment list:
- 7 (a) Fraud in securing appointment.
- 8 (b) Incompetency.
- 9 (c) Inefficiency.
- 10 (d) Inexcusable neglect of duty.
- 11 (e) Insubordination.
- 12 (f) Dishonesty.
- 13 (g) Drunkenness on duty.
- 14 (h) Intemperance.
- 15 (i) Addiction to the use of controlled substances.
- 16 (j) Inexcusable absence without leave.
- 17 (k) Conviction of a felony or conviction of a misdemeanor
- 18 involving moral turpitude. A plea or verdict of guilty, or a
- 19 conviction following a plea of nolo contendere, to a charge of a
- 20 felony or any offense involving moral turpitude is deemed to be a
- 21 conviction within the meaning of this section.
- 22 (l) Immorality.
- 23 (m) Discourteous treatment of the public or other employees.
- 24 (n) Improper political activity.
- 25 (o) Willful disobedience.



- 1 (p) Misuse of state property.
2 (q) Violation of this part or board rule.
3 (r) Violation of the prohibitions set forth in accordance with
4 Section 19990.
5 (s) Refusal to take and subscribe any oath or affirmation which
6 is required by law in connection with the employment.
7 (t) Other failure of good behavior either during or outside of
8 duty hours which is of such a nature that it causes discredit to the
9 appointing authority or the person's employment.
10 (u) Any negligence, recklessness, or intentional act which
11 results in the death of a patient of a state hospital serving the
12 mentally disabled or the developmentally disabled.
13 (v) The use during duty hours, for training or target practice, of
14 any material which is not authorized therefor by the appointing
15 power.
16 (w) Unlawful discrimination, including harassment, on the
17 basis of race, religious creed, color, national origin, ancestry,
18 *physical disability, medical condition, mental disability*, marital
19 status, sex, *gender, sexual orientation*, or age, against the public or
20 other employees while acting in the capacity of a state employee.
21 (x) Unlawful retaliation against any other state officer or
22 employee or member of the public who in good faith reports,
23 discloses, divulges, or otherwise brings to the attention of, the
24 Attorney General, or any other appropriate authority, any facts or
25 information relative to actual or suspected violation of any law of
26 this state or the United States occurring on the job or directly
27 related thereto.
28 SEC. 2. Section 19702 of the Government Code is amended
29 to read:
30 19702. (a) A person shall not be discriminated against under
31 this part because of sex, *gender, sexual orientation, age*, race,
32 religious creed, color, national origin, ancestry, marital status,
33 physical disability, *medical condition*, or mental disability. A
34 person shall not be retaliated against because he or she has opposed
35 any practice made an unlawful employment practice, or made a
36 charge, testified, assisted, or participated in any manner in an
37 investigation, proceeding, or hearing under this part. For purposes
38 of this article, "discrimination" includes harassment. This
39 subdivision is declaratory of existing law.

1 (b) As used in this section, the term “physical disability” has
2 the definition set forth in Section 12926, as that section presently
3 reads or as it subsequently may be amended.

4 (c) As used in this section, the term “mental disability” has the
5 definition set forth in Section 12926, as that section presently reads
6 or as it subsequently may be amended.

7 (d) Notwithstanding subdivisions (b) and (c), if the definition
8 of disability used in the federal Americans with Disabilities Act of
9 1990 (Public Law 101-336) would result in broader protection of
10 the civil rights of individuals with a mental disability or physical
11 disability, as defined in subdivision (b) or (c), then that broader
12 protection shall be deemed incorporated by reference into, and
13 shall prevail over conflicting provisions of, the definitions in
14 subdivisions (b) and (c). The definitions of subdivisions (b) and (c)
15 shall not be deemed to refer to or include conditions excluded from
16 the federal definition of “disability” pursuant to Section 511 of the
17 federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec.
18 12211).

19 (e) If the board finds that a person has engaged in
20 discrimination under this part, and it appears that this practice
21 consisted of acts described in Section 243.4, 261, 262, 286, 288,
22 288a, or 289 of the Penal Code, the board, with the consent of the
23 complainant, shall provide the local district attorney’s office with
24 a copy of its decision and order.

25 (f) (1) If the board finds that discrimination has occurred in
26 violation of this part, the board shall issue and cause to be served
27 on the appointing authority an order requiring the appointing
28 authority to cause the discrimination to cease and desist and to take
29 any action, including, but not limited to, hiring, reinstatement, or
30 upgrading of employees, with or without backpay, and
31 compensatory damages, which, in the judgment of the board, will
32 effectuate the purposes of this part. Consistent with this authority,
33 the board may establish rules governing the award of
34 compensatory damages. The order shall include a requirement of
35 reporting the manner of compliance.

36 (2) Notwithstanding paragraph (1), this paragraph shall apply
37 to state employees in State Bargaining Unit 6 or 8. If the board
38 finds that discrimination has occurred in violation of this part, the
39 board shall issue and cause to be served on the appointing authority
40 an order requiring the appointing authority to cause the



1 discrimination to cease and desist and to take any action,
2 including, but not limited to, hiring, reinstatement, or upgrading
3 of employees, with or without backpay, adding additional
4 seniority, and compensatory damages, which, in the judgment of
5 the board, will effectuate the purposes of this part. Consistent with
6 this authority, the board may establish rules governing the award
7 of compensatory damages. The order shall include a requirement
8 of reporting the manner of compliance.

9 (g) Any person claiming discrimination within the state civil
10 service may submit a complaint that shall be in writing and set
11 forth the particulars of the alleged discrimination, the name of the
12 appointing authority, the persons alleged to have committed the
13 unlawful discrimination, and any other information that may be
14 required by the board. The complaint shall be filed with the
15 appointing authority or, in accordance with board rules, with the
16 board itself.

17 (h) (1) Complaints shall be filed within one year of the alleged
18 unlawful discrimination or the refusal to act in accordance with
19 this section, except that this period may be extended for not to
20 exceed 90 days following the expiration of that year, if a person
21 allegedly aggrieved by unlawful discrimination first obtained
22 knowledge of the facts of the alleged unlawful discrimination after
23 the expiration of one year from the date of its occurrence.
24 Complaints of discrimination in adverse actions or rejections on
25 probation shall be filed in accordance with Sections 19175 and
26 19575.

27 (2) Notwithstanding paragraph (1), this paragraph shall apply
28 only to state employees in State Bargaining Unit 8. Complaints
29 shall be filed within one year of the alleged unlawful
30 discrimination or the refusal to act in accordance with this section,
31 except that this period may be extended for not to exceed 90 days
32 following the expiration of that year, if a person allegedly
33 aggrieved by unlawful discrimination first obtained knowledge of
34 the facts of the alleged unlawful discrimination after the expiration
35 of one year from the date of its occurrence. Complaints of
36 discrimination in disciplinary actions defined in Section 19576.5
37 shall be filed in accordance with that section. Complaints of
38 discrimination in all other disciplinary actions shall be filed in
39 accordance with Section 19575. Complaints of discrimination in



1 rejections on probation shall be filed in accordance with Section
2 19175.3.

3 (i) (1) When an employee of the appointing authority refuses,
4 or threatens to refuse, to cooperate in the investigation of a
5 complaint of discrimination, the appointing authority may seek
6 assistance from the board. The board may provide for direct
7 investigation or hearing of the complaint, the use of subpoenas, or
8 any other action which will effect the purposes of this section.

9 (2) This subdivision shall not apply to complaints of
10 discrimination filed in accordance with Section 19576.2.

11 (j) If a person demonstrates by a preponderance of evidence
12 that having opposed any practice made an unlawful employment
13 practice under this part, or having made a charge, testified,
14 assisted, or participated in any manner in an investigation,
15 proceeding, or hearing under this part was a contributing factor in
16 any adverse employment action taken against him or her, the
17 burden of proof shall be on the supervisor, manager, employee, or
18 appointing power to demonstrate by clear and convincing
19 evidence that the alleged adverse employment action would have
20 occurred for legitimate, independent reasons even if the person
21 had not engaged in activities protected under this part. If the
22 supervisor, manager, employee, or appointing power fails to meet
23 this burden of proof in any administrative review, challenge, or
24 adjudication in which retaliation has been demonstrated to be a
25 contributing factor, the person shall have a complete affirmative
26 defense to the adverse employment action. As used in this part,
27 “adverse employment action” includes promising to confer, or
28 conferring any benefit, effecting, or threatening to effect, any
29 reprisal, or taking, or directing others to take, or recommending,
30 processing, or approving, any personnel action, including, but not
31 limited to, appointment, promotion, transfer, assignment,
32 performance evaluation, suspension, or other disciplinary action.

33 ~~amended to read:~~

34 ~~12993. —(a) The provisions of this part shall be construed~~
35 ~~liberally for the accomplishment of the purposes of this part.~~
36 ~~Nothing in this part shall be deemed to repeal any of the provisions~~
37 ~~of the Unruh Civil Rights Act (Section 51 of the Civil Code) or of~~
38 ~~any other law of this state relating to discrimination because of~~
39 ~~race, religious creed, color, national origin, ancestry, physical~~
40 ~~disability, mental disability, medical condition, marital status, sex,~~



1 ~~age, or sexual orientation, unless those provisions provide less~~
2 ~~protection to the enumerated classes of persons covered under this~~
3 ~~part.~~

4 ~~(b) Nothing in this part relating to discrimination in~~
5 ~~employment on account of sex or medical condition shall be~~
6 ~~deemed to affect the operation of the terms or conditions of any~~
7 ~~bona fide retirement, pension, employee benefit, or insurance~~
8 ~~plan, provided the terms or conditions are in accordance with~~
9 ~~customary and reasonable or actuarially sound underwriting~~
10 ~~practices.~~

11 ~~(c) Nothing in this part shall be construed to prohibit a city, city~~
12 ~~and county, county, or other political subdivision of this state from~~
13 ~~providing or maintaining greater protections against~~
14 ~~discrimination than those provided by this part, but any law of a~~
15 ~~city, city and county, county, or other political subdivision of the~~
16 ~~state that purports to require or permit any action that would be a~~
17 ~~discriminatory practice under this part shall, to that extent, be~~
18 ~~invalid. Nothing in this part shall be construed, in any manner or~~
19 ~~way, to limit or restrict the application of Section 51 of the Civil~~
20 ~~Code.~~

